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# c 241 Mortmain and Charitable Uses Act

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## CHAPTER 241

## The Mortmain and Charitable Uses Act

## 1.—(1) In this Act,

Interpreta-  
tion.

- (a) "assurance" includes a gift, conveyance, appointment, lease, transfer, settlement, mortgage, charge, encumbrance, devise, bequest and every other assurance by deed, will or other instrument, and "assure" and "assuror" have a corresponding meaning;
- (b) "full and valuable consideration" includes such a consideration either actually paid upon or before the making of the assurance, or reserved or made payable to the vendor or any other person by way of rent, rent charge, or other annual payment, in perpetuity, or for any term of years, or other period, with or without a right of re-entry for non-payment thereof, or partly paid and partly reserved, as aforesaid; Imp. Acts 51-52 Vict. c. 42, s. 10; and 54-55 Vict. c. 73, s. 3.
- (c) "land" includes tenements and hereditaments corporeal and incorporeal of whatever tenure, but not money secured on land, or other personal estate arising from or connected with land;
- (d) "Minister" means the member of the Executive Council for the time being charged with the administration of this Act;
- (e) "will" includes codicil.

(2) The following shall be deemed to be charitable uses within the meaning of this Act:

Charitable  
uses.  
Imp. Act  
43 Eliz. c. 4,  
s. 1.

- (a) the relief of poverty;
- (b) education;
- (c) the advancement of religion; and
- (d) any purpose beneficial to the community, not falling under the foregoing heads. R.S.O. 1937, c. 147, s. 1.

## MORTMAIN

2. Land shall not be assured to or for the benefit of, or acquired by or on behalf of any corporation in mortmain, General prohibition against mortmain.

otherwise than under the authority of a licence from His Majesty, or of a statute for the time being in force, and if any land is so assured, otherwise than as aforesaid, the land shall be forfeited to His Majesty from the date of the assurance, and His Majesty may enter on and hold the land accordingly. R.S.O. 1937, c. 147, s. 2.

Imp. Act 51-  
52 Vict. c. 42,  
s. 1.

Power to  
grant  
licences  
in mortmain.

**3.** The Lieutenant-Governor in Council may grant to any person or corporation a licence in such form as he thinks fit to assure land in mortmain in perpetuity or otherwise, and may grant to any corporation a licence to acquire land in mortmain, and to hold such land in perpetuity or otherwise. R.S.O. 1937, c. 147, s. 3.

Imp. Act 51-  
52 Vict. c. 42,  
s. 2.

Saving for  
rents and  
services.

**4.** No entry or holding by or forfeiture to His Majesty under section 2 shall merge or extinguish or otherwise affect any rent or service which may be due to His Majesty in respect of any land. R.S.O. 1937, c. 147, s. 4.

Imp. Act 51-  
52 Vict. c. 42,  
s. 3

Regulations,

**5.**—(1) The Lieutenant-Governor in Council may make regulations respecting,

evidence  
upon appli-  
cation;

(a) the evidence required, upon the application for a licence in mortmain, as to the creation of the corporation, its powers and objects and its existence as a valid and subsisting corporation;

service of  
process;

(b) the appointment and continuance by the corporation of a person or corporation as its representative in Ontario on whom service of process, notices or other proceedings may be made, and the powers to be conferred on such representative;

forms,  
duration,  
etc.

(c) the forms, duration and extent of licences, and the forms of powers of attorney, applications, notices, statements, returns and other documents relating to applications and other proceedings under this Act.

Orders  
as to  
particular  
cases.

(2) The Lieutenant-Governor in Council may make orders as to particular cases where the general regulations may not be applicable or where they would cause unnecessary inconvenience or delay.

Proof to  
be furnished  
on applica-  
tion.

(3) Upon the application for a licence in mortmain, the applicant shall establish to the satisfaction of the Minister, or such other officer as may be charged by him to report thereon, that the provisions of this Act and the regulations have been complied with, and the Minister, Deputy Minister or such other officer may, for that or for any other purpose under this Act, take evidence under oath.

(4) There shall be paid to His Majesty for the public use <sup>Fees.</sup> of Ontario for every licence such fees as may be prescribed by the Lieutenant-Governor in Council. R.S.O. 1937, c. 147, s. 5.

#### CHARITABLE USES

**6.** Save as otherwise provided in this Act, every assurance, other than by will, of land or personal estate to be laid out in the purchase of land to or for the benefit of any charitable use shall be void unless made, <sup>Conditions under which assurances may be made to charitable uses.</sup>

- (a) to take effect in immediate possession for such charitable use;
- (b) without any power of revocation, reservation, condition or provision for the benefit of the assurator or of any person claiming under him; and
- (c) at least six months before the death of the assurator, and if of stock in the public funds by transfer thereof in the public books kept for the transfer of stock at least six months before such death,

provided that the assurance or any instrument forming part of the same transaction may contain all or any of the following conditions, so however that they reserve the same benefits to persons claiming under the assurator as to the assurator himself, namely:

- (i) the grant or reservation of a peppercorn or other nominal rent;
- (ii) the grant or reservation of mines or minerals;
- (iii) the grant or reservation of any easement;
- (iv) covenants or provisions as to the erection, repair, position, or description of buildings, the formation or repair of streets or roads, or as to drainage or nuisances, and covenants or provisions of the like nature for the use and enjoyment as well of the land comprised in the assurance as of any other adjacent or neighbouring land;
- (v) a right of entry on non-payment of any such rent or on breach of any such covenant or provision; or
- (vi) any stipulations of the like nature for the benefit of the assurator or of any person claiming under him; and

provided that nothing in this section shall apply to or affect any such assurance made for full and valuable consideration. R.S.O. 1937, c. 147, s. 6.

Necessity  
for sale.

7.—(1) Subject to the provisions hereinafter contained where land is assured otherwise than by will to or for the benefit of any charitable use the same shall notwithstanding anything contained in the deed or other instrument of assurance be sold within two years from the date of the assurance or within such extended period as may be determined by a judge of the Supreme Court.

Idem.

(2) If the land is not sold within the two years or within such extended period it shall vest forthwith in the Public Trustee and subsection 2 of section 10 shall apply thereto.

When  
sanctioned.

(3) A judge of the Supreme Court, if satisfied that the land so assured is required for actual occupation for the purposes of the charity and not as an investment, may by order sanction the retention of the land. R.S.O. 1937, c. 147, s. 7.

#### EXEMPTIONS

Interpreta-  
tion.

8.—(1) In this section,

- (a) "public park" includes any park, garden, or other land dedicated or to be dedicated to the recreation of the public;
- (b) "school" means a school, or department of a school, at which education is given in literature, art, science or mathematics, or a vocational or technical school;
- (c) "schoolhouse" includes the teacher's dwelling house, the playground, if any, and the offices and premises belonging to or required for a school;
- (d) "public museum" includes buildings used, or to be used, for the preservation of a collection of paintings or other works of art, or of objects of natural history, or of mechanical, scientific or philosophical inventions, instruments, models or designs, and dedicated or to be dedicated to the recreation of the public, together with any libraries, reading rooms, laboratories and other offices and premises used or to be used in connection therewith.

Imp. Act  
51-52 V. c. 42,  
s. 6.

Assurances  
for a public  
park, school,  
or museum.

(2) Notwithstanding anything in this Act, land or personal estate to be laid out in the purchase of land, may be assured for the following purposes:

- (a) for a public park;
- (b) for a public museum;
- (c) for a public library;
- (d) for a school or schoolhouse.

(3) Land assured for the purposes of a school or school-house and not required for actual use and occupation for such purposes or the part thereof not so required shall be sold within two years from the date of the assurance or, in the case of a will, from the death of the testator, or such extended period as may be determined by a judge of the Supreme Court, and the provisions of subsection 2 of section 10 and of section 12 shall apply. R.S.O. 1937, c. 147, s. 8.

Sale of land assured for school if not required for actual use.

9. Sections 2 and 6 shall not apply to the following assurances:

Assurances for certain purposes.

- (a) an assurance of land or personal estate to be laid out in the purchase of land, to or in trust for any incorporated university, college or school in Ontario, or for the support and maintenance of the students thereat;
- (b) an assurance, otherwise than by will, to trustees on behalf of any society or body of persons, incorporated or unincorporated, associated together for religious purposes, or for the promotion of education, art, literature, science or other like purposes, of land not exceeding two acres, for the erection thereon of a building for such purposes, or any of them, or whereon a building used or intended to be used for such purposes, or any of them, has been erected. R.S.O. 1937, c. 147, s. 9.

Imp. Act 51-52 V. c. 42, s. 7.

#### LAND DEVISED BY WILL

10.—(1) Land may be devised by will to or for the benefit of any charitable use, but, except in the cases provided for by sections 8 and 9 and except as otherwise provided herein, shall, notwithstanding anything to the contrary in the will, be sold within two years from the death of the testator, or such extended period as may be determined by a judge of the Supreme Court.

Power to devise land for charitable use.

(2) So soon as the two years or such extended period have expired without the completion of the sale of the land, the land shall vest forthwith in the Public Trustee who shall cause the same to be sold with all reasonable speed and after payment of the costs and expenses incurred in or connected with such sale and proceedings shall pay the proceeds to the trustees for the charity. R.S.O. 1937, c. 147, s. 10.

Where land remains unsold after expiration of two years.

11. Any personal estate by will directed to be laid out in the purchase of land to or for the benefit of any charitable use, shall, except as hereinafter provided, be held to or for the

Personal estate directed to be laid out in land.

benefit of the charitable use as though there had been no direction to lay it out in the purchase of land. R.S.O. 1937, c. 147, s. 11.

Power to retain land in certain cases.

**12.** A judge of the Supreme Court, if satisfied that land devised by will to or for the benefit of any charitable use, or proposed to be purchased out of personal estate by will directed to be laid out in the purchase of land, is required for actual occupation for the purposes of the charity and not as an investment, may by order sanction the retention or acquisition, as the case may be, of such land. R.S.O. 1937, c. 147, s. 12.

#### GIFTS AND BEQUESTS TO CERTAIN PUBLIC BODIES

Power of certain public bodies to accept gifts to charitable uses.

**13.—(1)** The Government of Ontario, a municipal corporation, a school board, a public library board or association, a public hospital board and trustees empowered to administer or hold property for charitable uses may have, take, hold and enjoy by gift, grant, devise, conveyance or bequest real or personal property of any nature or kind and wherever situate, whether within or without Ontario, or the proceeds thereof upon the terms expressed in the gift, grant, devise, bequest or conveyance whereby the same is given, granted, devised, bequeathed or conveyed to such body.

Agreement with donor as to administration.

**(2)** Any such body may, subject always to the provisions of the Act by or under the authority of which it exists and to any law regulating or limiting its power to contract debts, enter into an agreement for the holding, management, administration or disposition of any such property with the person giving, granting, conveying, devising or bequeathing the same to such public body upon such terms as may be agreed upon between the parties to any such gift, grant, devise, bequest or conveyance.

Necessity for sale within two years.

**(3)** Land so given, granted, devised, bequeathed or conveyed and not required for actual use and occupation for the purposes of the trust upon which it was given, granted, devised, conveyed or assured to such public body shall be sold within two years from the date of the gift, grant, devise, conveyance or assurance or, in the case of a will, from the death of the testator, or such extended period as may be determined by a judge of the Supreme Court, and the provisions of subsection 2 of section 10 and of section 12 shall apply.

Retroactive effect of section.

**(4)** This section shall apply to gifts, grants, devises, bequests and conveyances heretofore made as well as to such as may hereafter be made. R.S.O. 1937, c. 147, s. 13.

## SUPPLEMENTAL

**14.**—(1) In every case of a breach or supposed breach of any trust created for charitable purposes, or whenever the direction or order of a court is deemed necessary for the administration of any trust for charitable purposes, any two or more persons may present a petition to the Supreme Court stating such complaint and praying such relief as the nature of the case may require, and the court may hear the petition in a summary way, and upon such affidavits or such other evidence as is produced upon the hearing, may determine the same, and make such order therein, and with respect to the costs of the application, as shall seem just, and any order so made shall be subject to appeal as if made in an action.

(2) Every such petition shall be signed by the persons preferring the same in the presence of and shall be attested by their solicitor, and shall be submitted to and may be allowed by the Attorney-General, and such allowance shall be certified by him before any such petition shall be presented. R.S.O. 1937, c. 147, s. 14.

**15.** Nothing in this Act shall apply so as to limit or restrict the right possessed by any corporation under any other Act, or affect any charter or licence in force at the passing of this Act enabling land to be assured or held in mortmain. R.S.O. 1937, c. 147, s. 15.

Procedure in cases of breach of a charitable trust, etc., or where order necessary for administration.

Execution of petition and certificate by Attorney-General. Imp. Act 52 Geo. 3, c. 101, ss. 1 and 2.

Saving for existing licences, etc.



